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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:

MATTERHORN GROUP, INC.,
Debtor.

VITAFREZE FROZEN
CONFECTIONS, INC.,
Debtor.

DELUXE ICE CREAM
COMPANY,
Debtor.

- ☒ Affects ALL DEBTORS
☐ Affects only MATTERHORN GROUP,
INC.
☐ Affects only VITAFREZE FROZEN
CONFECTIONS, INC.
☐ Affects only DELUXE ICE CREAM
COMPANY

Lead Case No. 10-39672-A-11

Jointly Administered with
Case Nos. 10-39664 and 10-39670

DC No. LNB-14

Chapter 11 Cases

**OPPOSITION TO DEBTORS'
AMENDED MOTION FOR
AUTHORITY TO USE CASH
COLLATERAL OUTSIDE THE
ORDINARY COURSE TO PAY
INSIDER RETENTION
BONUSES**

Date: October 25, 2010
Time: 9:00 a.m.
Judge: Michael S. McManus
Place: Department A
Courtroom No. 28
Floor No. 7

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1 The Official Committee of Unsecured Creditors in the above-captioned cases (the
2 “Committee”), hereby files this Opposition to Debtors’ Amended Motion For Authority To
3 Use Cash Collateral Outside The Ordinary Course to Pay Insider Retention Bonuses (“Insider
4 Bonus Motion”).

5 Bankruptcy Code § 503(c)(1) virtually eliminates the ability of Debtors to provide
6 retention plans for insiders. Payments under these retention bonus plans may not be approved
7 unless the court finds that the person to be paid has “a bona fide job offer from another
8 business at the same or greater compensation” and provides services that “are essential to the
9 survival of the business.” Bankruptcy Code § 503(c)(1).

10 In addition, payments must be within one of two caps calculated by reference to pre-
11 bankruptcy plans or payments. *Id.* First, the payment must not exceed ten times the mean
12 payment of a similar kind to nonmanagement employees made during the calendar year in
13 which the payment is to be made. Bankruptcy Code § 503(c)(1)(C)(i). Alternatively, if there
14 were no similar payments to nonmanagement employees during the calendar year, the
15 retention payment cannot exceed 25 percent “of the amount of any similar transfer or
16 obligation made to or incurred for the benefit of such insider for any purpose during the
17 calendar year before the year in which such transfer is made or obligation is incurred.”
18 Bankruptcy Code § 503(c)(1)(C)(ii).

19 The Debtors’ Insider Bonus Motion fails to satisfy the requirements under Bankruptcy
20 Code § 503(c)(1). The Insider Bonus Motion simply states that the Debtors “seek authority to
21 pay certain insiders increased compensation in measure with the increased work to the
22 performed during the sale process” without providing any supporting evidence for such
23 bonuses. *See* Insider Bonus Motion at pg. 7. While there is always a possibility that any
24 insider(s) of the Debtors could obtain another employment or a job offer, such possibility is
25 not an adequate basis for providing retention bonuses for insiders. The Debtors do not
26 demonstrate bona fide job offers from another business at the same or great compensation to
27 each of those insiders they wish to provide retention bonuses and the Insider Bonus Motion
28 should be denied.

1 Furthermore, the Debtors also do not demonstrate that those insiders provide services
2 that are essential to the survival of the business. The Debtors' assets will be sold in less than
3 a month and it is hard to justify those extra payments to the insiders who are already receiving
4 payments for their services and have fiduciary duties to the Debtors (*e.g.* \$30,000 *monthly*
5 payment to the Debtors CEO Nathan Bell), especially in a case in which unsecured creditors
6 may not receive any distribution.

7 The Debtors failed to satisfy the requirements under Bankruptcy Code § 503(c) and
8 the Committee respectfully requests that the Court deny Debtors' Insider Bonus Motion. The
9 Committee further requests that the Court grant such other and additional relief as the Court
10 deems just and proper under the circumstances of these cases.

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12 DATED: October 18, 2010

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14 By: 

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Creditors